

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Trevor Hackett	Team: Squad #8	CCRB Case #: 202000210	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 01/07/2020 9:25 PM	Location of Incident: § 87(2)(b)	Precinct: 114	18 Mo. SOL 7/7/2021	EO SOL 2/21/2022	
Date/Time CV Reported Thu, 01/09/2020 5:23 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 01/09/2020 5:23 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Calle	14724	951581	INT CIS
2. POM Ignacio Delrio	21908	952661	INT CIS
3. SGT William Larkin	04957	930534	INT CIS
4. POM Michael Alpers	18406	958234	PSA 9
5. POM Frank Ryan	21262	952201	INT CIS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. Officers			
2. An officer			
3. POF Wendy Amaya	11316	953635	PSA 8

Officer(s)	Allegation	Investigator Recommendation
A.SGT William Larkin	Abuse: Sergeant William Larkin stopped § 87(2)(b)	§ 87(2)(b)
B.POM Michael Calle	Abuse: Detective Michael Calle frisked § 87(2)(b)	§ 87(2)(b)
C.POM Michael Calle	Abuse: Police Officer Michael Calle searched § 87(2)(b)	§ 87(2)(b)
D.POM Ignacio Delrio	Abuse: Detective Ignacio Delrio frisked § 87(2)(b)	§ 87(2)(b)
E.POM Ignacio Delrio	Abuse: Police Officer Ignacio Delrio searched § 87(2)(b)	§ 87(2)(b)
F.POM Michael Alpers	Discourtesy: Police Officer Michael Alpers spoke discourteously to § 87(2)(b)	§ 87(2)(b)
G.SGT William Larkin	Abuse: Sergeant William Larkin searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
H.SGT William Larkin	Abuse: Sergeant William Larkin searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
I.POM Frank Ryan	Abuse: Police Officer Frank Ryan searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
J.POM Michael Calle	Abuse: Police Officer Michael Calle failed to provide § 87(2)(b) with a business card.	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)		

Case Summary

On January 9, 2020, § 87(2)(b) filed this complaint via the CCRB website on behalf of himself and his father, § 87(2)(b).

On January 7, 2020, § 87(2)(b) was walking to a car he had borrowed, which was parked in front of 2-54 27th Avenue in Queens, when he was approached by Police Officer Michael Calle, Police Officer Ignacio Delrio, Sergeant William Larkin, and Police Officer Frank Ryan, all the Queens North Field Intelligence Office. § 87(2)(b) fled from the officers and was ultimately stopped in the lobby of § 87(2)(b) by PO Calle (**Allegations A– Abuse of Authority, § 87(2)(g)** PO Calle frisked and searched § 87(2)(b) (**Allegations B and C – Abuse of Authority, § 87(2)(g)** PO Delrio arrived and frisked and searched § 87(2)(b) (**Allegations D and E – Abuse of Authority, § 87(2)(g)** During this time, Police Officer Marcos Benlorenzo, Police Officer Michael Alpers, Police Officer Otniel Figueroa, Police Office Sazib Ahmed, Police Officer Anthony Pastore, Police Officer Eric Zeplin, PO Jagdev Singh, PO Christopher Singh, all of PSA 9, as well as Police Officer Una Segota and Police Officer Andrew Taub of the 114th Precinct, arrived at the location. Additionally, § 87(2)(b)'s parents, § 87(2)(b) and § 87(2)(b) arrived. § 87(2)(b) got into an argument with Police Officer Michael Alpers of PSA9, who said to § 87(2)(b) “Who the fuck do you think you are?” (**Allegation F – Discourtesy, § 87(2)(g)** Sgt. Larkin, PO Ryan, and Police Officer Wendy Amaya of PSA9 searched the vehicle § 87(2)(b) was borrowing (**Allegation G – Abuse of Authority, § 87(2)(g)** Several minutes later, PO Ryan searched the vehicle again (**Allegation H and I – Abuse of Authority, § 87(2)(g)** PO Calle failed to provide § 87(2)(b) with a business card (**Allegation J – Abuse of Authority, § 87(2)(g)** § 87(4-b), § 87(2)(g)

§ 87(2)(b) No summons or arrest resulted from this incident.

Body Worn Camera footage was obtained from PO Calle, PO Benlorenzo, PO Singh, PO Alpers, PO Figueroa, PO Amaya, PO Ahmed, PO Pastore, PO Zeplin, PO Christopher Singh, PO Jagdev Singh, PO Segota, and PO Taub. That footage is in IAs #63 – 77, 97, and summarized in IAs #79 (**Board Review 01-17**). The BWC footage only partially captures this incident.

Findings and Recommendations

Allegation A: Abuse of Authority – Sergeant William Larkin stopped § 87(2)(b)

It is undisputed that the location was known to have a high occurrence of gang related shootings and other violent crimes. It is further undisputed that PO Calle, PO Delrio, Sgt. Larkin, and PO Ryan approached § 87(2)(b) as he was entering a car through the front passenger side door of a car.

§ 87(2)(b) testified that he had just left his cousin's apartment building, located at § 87(2)(b), alone and was walking to his cousin's car, a blue Nissan Altima, which his cousin gave him permission to borrow. § 87(2)(b) was only holding his cell phone as he walked to the car. He noticed an unmarked white four-door sedan with tinted windows driving down 3rd Street at the intersection of 27th Avenue, which was occupied by PO Calle, PO Delrio, Sgt. Larkin, and PO Ryan. The vehicle did not have its lights on, and § 87(2)(b) could not see the vehicle's occupants through its tinted windows. When § 87(2)(b) approached the driver side door of his cousin's car, the white vehicle quickly made a right onto 27th Avenue, made a U-turn, and slowly drove towards § 87(2)(b) § 87(2)(b) became concerned for his safety and decided to enter the car through the passenger door, out of an abundance of caution.

§ 87(2)(b) said he walked around the car, opened the front passenger door, and bent down slightly to enter the car. The white vehicle drove onto the sidewalk and stopped behind him. § 87(2)(b) thought the occupants of the white vehicle were going to harm him, so he decided not to enter the car and closed the door. The white vehicle drove towards § 87(2)(b) on the sidewalk, and he fled on foot in the opposite direction (**Board Review 18**). Attempts to contact § 87(2)(b) for additional details regarding this aspect of the incident were unsuccessful (see IAs for contact attempts).

Sgt. Larkin stated he, PO Calle, PO Delrio, and PO Ryan were in a white unmarked sedan conducting surveillance in the Astoria Houses regarding the persistent crime conditions such as car thefts, shootings, and other violent crimes, committed by feuding gangs in rival housing developments. All the officers observed § 87(2)(b) walk out of one of the buildings at the Astoria Houses Development, and down a dark sidewalk which was to the right of the officers' vehicle and a few car lengths away. As § 87(2)(b) walked, he stopped to look at multiple cars, as if he was trying to both get rid of something and get into a car. § 87(2)(b) appeared nervous and frantic. He pulled on the handles of two cars' doors. § 87(2)(b) was carrying a black plastic bag, which appeared to contain something heavy. Based on Sgt. Larkin's prior arrests of individuals carrying bags, and how heavy the bag looked, he believed the bag could have contained a firearm, though he did not observe any outline or shape in the bag that indicated this. It did not appear that § 87(2)(b) was concealing any weapon underneath his clothing. After observing § 87(2)(b) for between 30 to 60 seconds, Sgt. Larkin observed him approach a car, open the front passenger side door, throw the black bag inside, and close the door. Sgt. Larkin stated that he and the officers collectively decided to stop § 87(2)(b). PO Delrio, PO Calle, and PO Ryan exited their vehicle, approached § 87(2)(b) and verbally identified themselves as police officers. § 87(2)(b) immediately fled in the opposite direction (**Board Review 19**).

§ 87(2)(g)
PO Calle said officers first observed § 87(2)(b) emerge into the street from an unlit area between two parked cars before returning to the sidewalk. § 87(2)(b) walked westbound on 27th Avenue and walked very close to, and looked inside of, approximately five cars. He did not stop at or make contact with these cars. PO Calle believed § 87(2)(b)'s behavior was consistent with someone who intended steal a car or steal something from inside a car. § 87(2)(b) ultimately stopped at the passenger side of one car and PO Calle, who had pulled into a parking lot to observe § 87(2)(b) saw him holding a black plastic bag which was "balled up" and tied off at the top, and which was approximately the size of one's palm. PO Calle did not suspect the bag contained a weapon or narcotics. PO Calle stated that the officers approached § 87(2)(b) with the intention of having a conversation but that his flight from the location raised his suspicion and was a factor in stopping § 87(2)(b) (**Board Review 20**).

PO Delrio stated that after the officers observed § 87(2)(b) step into the street and then back onto the sidewalk, § 87(2)(b) ducked behind a blue sedan. The officers pulled into the driveway of a parking lot next to § 87(2)(b) and PO Ryan and PO Calle identified themselves. PO Delrio observed § 87(2)(b) leaning into the car through the open rear passenger door. This led PO Delrio to believe that § 87(2)(b) was "possibly" breaking into the car. When § 87(2)(b) fled, PO Delrio pursued him behind PO Calle and Sgt. Larkin. Prior to this, PO Delrio did not observe § 87(2)(b) stop at or contact any other cars. PO Delrio did not observe § 87(2)(b) carrying anything or making any observation that indicated that he was carrying a weapon. PO Delrio's view of § 87(2)(b) was partially obstructed by other officers when PO Delrio was in the police vehicle (**Board Review 21**).

PO Ryan said the officers observed § 87(2)(b) walking into the street as if to approach the driver's side of a car. He looked at the officers' vehicle before returning to the sidewalk. As § 87(2)(b) walked along several cars, he looked at them as he passed. PO Ryan believed this was suspicious because when someone normally walks on the sidewalk, they look in front of them instead of at the cars next to them. § 87(2)(b) did not duck behind any of the cars or appear to hide from officers. PO Ryan did not recall if § 87(2)(b) stopped at or contacted any of the cars and he did not recall if he was carrying anything or if he appeared to be concealing a weapon. § 87(2)(b) ultimately stopped at one car. The officers pulled into a driveway next to him and identified themselves. § 87(2)(b) opened the passenger side door, and "gestured" as though he was throwing or placing an object inside the car, though PO Ryan did not see the object itself. PO Ryan believed § 87(2)(b) "could have" thrown a firearm or narcotics into the car based on his experience with the crime conditions at that location. PO Ryan stayed with the police vehicle as § 87(2)(b) fled. He observed that as § 87(2)(b) ran from the officers, his arms were not moving back and forth as they normally would when one is running. This, in addition to the crime conditions specific to the area, led PO Ryan to believe that § 87(2)(b) may have been holding onto a firearm on his midsection, though PO Ryan did not see this part of § 87(2)(b)'s body (**Board Review 22**).

§ 87(2)(g)
§ 87(2)(b) Sgt. Larkin said the officers collectively intended to stop § 87(2)(b) for possible grand larceny auto and possible possession of a firearm. PO Calle and PO Ryan said the officers did not initially intend to stop § 87(2)(b) and instead just wanted to speak with him to evaluate the situation. They said § 87(2)(b) fleeing the location in addition to PO Calle's observation that he was possibly carrying a firearm were the factors which led to the stop. PO Delrio said he did not know what PO Ryan's and PO Calle's intentions were when they attempted to speak with § 87(2)(b) and did not know if he was being stopped.

§ 87(2)(b)'s Stop Report, which was prepared by PO Calle, § 87(2)(g) states that PO Calle observed § 87(2)(b) in an unlit area of the sidewalk holding a black plastic bag. § 87(2)(b) noticed the officers in their vehicle, who then identified themselves as police officers. § 87(2)(b) opened the passenger door of the car next to him, threw the bag inside, and fled the location. The report lists the factors which led to the stop as concealing or possessing a weapon, acting as a lookout, eluded officers, refused multiple commands to stop, and casing a victim or location. The report notes the period of observation prior to the stop as 30 minutes (**Board Review 23**).

There is no BWC footage of this aspect of the incident.

The common-law right to inquire is activated by a founded suspicion that criminal activity is afoot and permits a somewhat greater intrusion in that a policeman is entitled to interfere with a citizen to the extent necessary to gain explanatory information, but short of a forcible seizure. An officer may stop a person when the officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a felony or misdemeanor. People v. DeBour, 40 N.Y. 2d 210, 233 (1976) (**Board Review 25**).

A defendant's flight in response to an approach by the police, combined with other specific circumstances indicating that the suspect may be engaged in criminal activity, may give rise to reasonable suspicion, the necessary predicate for police pursuit. People v. Parker, 32 N.Y.3d 49 (**Board Review 26**).

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Abuse of Authority: Police Officer Michael Calle frisked § 87(2)(b)

Allegation C – Abuse of Authority: Police Officer Michael Calle searched § 87(2)(b)

Allegation D – Abuse of Authority: Police Officer Ignacio Delrio frisked § 87(2)(b)

Allegation E – Abuse of Authority: Police Officer Ignacio Delrio searched § 87(2)(b)

The BWC footage of the incident begins after the officers have caught up to § 87(2)(b) and stopped him in the lobby of § 87(2)(b). In PO Segota’s BWC footage, at the 01:00-minute mark of the media player timestamp, visible at the bottom of the screen, § 87(2)(b) faces the lobby wall with his hands up. PO Calle, who is standing behind him, frisks the sides of § 87(2)(b)’s waist, and leans down to either side of § 87(2)(b)’s legs. At 01:25, Sgt. Larkin enters the lobby and handcuffs § 87(2)(b). PO Calle continues to frisk the same areas and § 87(2)(b) tells Sgt. Larkin his name. At 01:48, Sgt. Larkin leaves the lobby. At 02:05, PO Calle has § 87(2)(b) sit down on a set of steps (**Board Review 15**). [Given that events occurred quickly, Sgt. Larkin arrived after PO Calle had already begun frisking § 87(2)(b) and that he was only present in the lobby for 20 seconds before leaving, these allegations have not been pled to Sgt. Larkin.]

In PO Calle’s BWC footage, at the 00:06-minute mark of the media player timestamp, visible at the bottom of the screen, PO Calle stands next to § 87(2)(b) who is seated on the steps. PO Delrio approaches and asks PO Calle if he checked § 87(2)(b)’s pockets. PO Calle says, “Yeah.” PO Delrio says to § 87(2)(b) “What else you got on you?” PO Delrio orders § 87(2)(b) to stand up and PO Delrio leans down towards § 87(2)(b)’s side (**Board Review 01**). PO Ahmed’s BWC footage captures a different angle of the interaction between PO Delrio and § 87(2)(b) and shows, at the 01:11 minute mark of the media player timestamp (visible at the bottom of the screen), PO Delrio reaches his hands toward § 87(2)(b)’s legs. At 01:38, PO Delrio’s left hand enters § 87(2)(b)’s left rear pants pocket. PO Delrio does not appear to grab the fabric or make any attempt to lift § 87(2)(b)’s pants (**Board Review 08**). In PO Calle’s BWC footage, at 05:23, PO Calle receives a phone call and says to the caller, “Do I have what? Ca.... hold on, stand by.” PO Calle immediately reaches his hand into both of § 87(2)(b)’s cargo pockets, both of his front pants pockets, and his front hoodie pocket (**Board Review 01**). Prior to PO Calle entering § 87(2)(b)

§ 87(2)(b)'s pockets, nobody requests that PO Calle retrieve § 87(2)(b)'s cellphone. At 10:00, § 87(2)(b) repeatedly asks officers where his phone is. PO Calle, nor any other officer, enters § 87(2)(b)'s pockets to locate his phone.

§ 87(2)(g) § 87(2)(b) stated that he fled across the NYCHA development to the lobby of his apartment building. His wallet was in his front right pants pocket. His phone charger was in the front pocket of his hooded sweatshirt and his keys and a black lighter were in one of his cargo pockets. § 87(2)(b) stopped running once inside his lobby because he started suffering from an asthma attack and was having difficulty breathing. PO Calle, PO Delrio and Sgt. Larkin entered the lobby and § 87(2)(b) asked them for help as he believed he was being chased by unknown assailants. Prior to this, the officers did not identify themselves, issue any commands or activate any lights on their vehicle. PO Calle ordered § 87(2)(b) to get against the wall and he complied. PO Calle held § 87(2)(b) against the wall and handcuffed him, then reached his hands inside the front pocket of § 87(2)(b)'s sweatshirt, his two front and two back pants pockets, and both of his cargo pockets. PO Calle removed the contents of § 87(2)(b)'s pockets, but did not find any contraband. PO Calle did not pat down § 87(2)(b) before searching him. § 87(2)(b) then sat down on a small stairwell in the lobby and removed his boots as he was feeling hot. § 87(2)(b) laid on the floor and tried to catch his breath when PO Delrio stood him up, reached his hands into the front pocket of his hooded sweatshirt, his two front and two back pants pockets, and both of the cargo pockets. PO Delrio picked up § 87(2)(b)'s boots and looked inside them.

PO Calle § 87(2)(g) said he and PO Ryan verbally identified themselves, which prompted § 87(2)(b) to open the car door, throw the bag inside, close the door, and flee on foot in the opposite direction. PO Calle chased § 87(2)(b) across the housing complex and as § 87(2)(b) turned his body, PO Calle observed an "L" shaped, heavy object in his front hoodie pocket, which was swaying back and forth as he ran. § 87(2)(b) ignored repeated orders to stop. PO Calle eventually caught up with him and § 87(2)(b) said, "I give up." PO Calle briefly lost sight of § 87(2)(b) during the pursuit but did not witness him drop or throw anything. Immediately upon entering the lobby, PO Calle frisked § 87(2)(b)'s front hoodie pocket due to object he had observed during the foot pursuit. Upon frisking the area, PO Calle did not detect the object. PO Calle initially denied frisking any other part of § 87(2)(b)'s body. After viewing the BWC footage, he acknowledged frisking § 87(2)(b)'s legs and said he did so for his own safety, though § 87(2)(b) did not appear to be concealing a weapon anywhere on his body. PO Calle did not recall searching § 87(2)(b) though when presented with BWC footage of him reaching into § 87(2)(b)'s pants and hoodie pockets, PO Calle said he did this to assist § 87(2)(b)'s grandmother in finding § 87(2)(b)'s phone.

§ 87(2)(g) As § 87(2)(b) fled on foot, PO Delrio did not observe him in possession of or concealing anything that could be perceived as a weapon, and he did not observe § 87(2)(b) discard any objects. However, PO Delrio clarified that he was running behind two other officers and did not have a clear view of § 87(2)(b). PO Delrio lost track of him but was later informed over the radio by PO Calle that § 87(2)(b) had been stopped nearby. When PO Delrio entered the lobby of the building, § 87(2)(b) was sitting down and handcuffed. PO Delrio did not observe PO Calle frisk or search § 87(2)(b). PO Delrio recognized § 87(2)(b) as an associate of a gang that operated within that housing development and which responsible for a number of shootings in the area. PO Delrio had not had any previous interactions with § 87(2)(b) and was unaware of what, if anything, § 87(2)(b)'s criminal history entailed. PO Delrio asked PO Calle if any officer had searched § 87(2)(b) but he did not hear a response. PO Delrio did not make any observation which led him to believe that § 87(2)(b) was carrying a weapon, but he decided to frisk § 87(2)(b).

§ 87(2)(b) for the officers' safety due to § 87(2)(b)'s association with local gang members. PO Delrio initially denied searching § 87(2)(b) though after reviewing the BWC footage, he acknowledged that it was possible his hand entered § 87(2)(b)'s rear pants pocket. He said if it did, it was for the purpose of pulling up § 87(2)(b)'s pants, which were sagging. § 87(2)(b) was not under arrest.

Sgt. Larkin and PO Ryan both denied observing PO Calle frisk or search § 87(2)(b). § 87(2)(b) was far ahead of Sgt. Larkin during the pursuit, so he did not see if § 87(2)(b) was concealing or holding onto anything. Sgt. Larkin did not see § 87(2)(b) discard anything during the pursuit, but briefly lost sight of him. PO Ryan stayed with the police vehicle as § 87(2)(b) fled. PO Ryan observed that as § 87(2)(b) ran from the officers, his arms were not moving back and forth as they normally would when one is running. This, in addition to the crime conditions specific to the area, led PO Ryan to believe that § 87(2)(b) may have been holding onto a firearm on his midsection, though PO Ryan did not see this part of § 87(2)(b)'s body. Sgt. Larkin and PO Ryan conducted a canvass of the area where § 87(2)(b) had run through, which yielded negative results for contraband or any of § 87(2)(b)'s belongings.

§ 87(2)(b)'s Stop Report, which was prepared by PO Calle, notes that he was frisked and searched, and that consent was not requested but was provided. The Stop Report § 87(2)(g) states that when officers identified themselves, § 87(2)(b) fled the scene in the opposite direction with his hands holding an object which appeared to be a weapon in his abdomen/front waist area. The object swayed back and forth as § 87(2)(b) ran. § 87(2)(b) was ultimately stopped inside a NYCHA building and upon further investigation, the object he was holding onto was not a weapon (**Board Review 23**).

An officer may frisk an individual when they reasonably suspect that the individual may be armed and present a risk of harm to the officer. If an apparent weapon is revealed during a frisk, a limited search may be conducted only of the area where the apparent weapon was discovered People v. DeBour, 40 N.Y.2d 210 (1976) (**Board Review 25**).

PO Calle stated that § 87(2)(b) while fleeing from the officers, turned his body, which allowed PO Calle to observe an "L-shaped" bulge in his front hoodie pocket. § 87(2)(b) stated only carrying this phone charger in this pocket. Though Sgt. Larkin and PO Delrio stated that they were not in a position to observe whether § 87(2)(b) was concealing an object as he fled the scene, both officers stated that prior to this point, it did not appear as though § 87(2)(b) was concealing a weapon. PO Calle stated he frisked § 87(2)(b)'s front hoodie pocket once he was apprehended but did not detect the object that he had previously witnessed. Despite this, PO Calle acknowledged that he continued to frisk § 87(2)(b)'s legs even though it did not appear that he was concealing a weapon on any other part of his body. Additionally, the object which PO Calle observed was not found after a canvass of the area.

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PO Delrio acknowledged frisking § 87(2)(b) and said he did so for the officers' safety and because no officer responded when asked if this had already been done. However, the BWC footage shows PO Calle, who is standing to PO Delrio's immediate left, reply to PO Delrio's question that § 87(2)(b) had already been "checked." At this point, PO Delrio acknowledged making no observations that led him to believe § 87(2)(b) was armed, and although he initially denied searching § 87(2)(b) he later acknowledged the possibility that his hand entered § 87(2)(b)'s rear pants pocket in order to lift up § 87(2)(b)'s sagging pants. However, the BWC footage captures PO Delrio's hand enter the rear pocket of § 87(2)(b)'s pants, which are sagging at the time, and shows that PO Delrio made no attempt to lift § 87(2)(b)'s pants at any point. § 87(2)(g)

Allegations F – Discourtesy: Police Officer Michael Alpers spoke discourteously to #####.

§ 87(2)(b), § 87(2)(b)'s mother, stated that when she and § 87(2)(b)'s father, § 87(2)(b) arrived, § 87(2)(b) tried to speak with § 87(2)(b) and PO Alpers told him to step back. § 87(2)(b) began cursing at PO Alpers and asked why he needed to step back. PO Alpers said to § 87(2)(b) "Get the fuck back. We're doing our job." § 87(2)(b) told § 87(2)(b) to step outside, which § 87(2)(b) did (**Board Review 27**). § 87(2)(b) and § 87(2)(b) did not allege that any officer used profanity during the incident.

In PO Alpers's BWC footage, at the 09:10 minute mark of the media player timestamp, visible at the bottom of the screen, § 87(2)(b) approaches § 87(2)(b) who is handcuffed and sitting on the lobby steps. PO Alpers and another officer order § 87(2)(b) to step back. § 87(2)(b) tells the officers, "I'm going to be real with y'all. My son can't breathe. Y'all can't tell me nothing right now," and walks away from the officers. At 09:38, § 87(2)(b) turns around and says, "That's my son. If that were your fucking son, would you be worried? So, shut the fuck up." PO Alpers says, "Listen, you shut the fuck up. Who do you think you're talking to like that, bro?" § 87(2)(b)'s mother and § 87(2)(b) begin pushing him towards the door and telling him to go outside as § 87(2)(b) continues shouting at PO Alpers. PO Alpers' BWC footage does not capture him telling § 87(2)(b) to "Get the fuck back" (**Board Review 04**).

PO Alpers stated that when § 87(2)(b) arrived, he was too close to § 87(2)(b) and PO Alpers and other officers ordered him to move back multiple times. § 87(2)(b) began yelling and cursing at the officers. PO Alpers believed that in the heat of the moment, he told § 87(2)(b) to "Get the fuck back," because § 87(2)(b) had refused to comply with multiple orders to do so. PO

Alpers also acknowledged saying, “No you shut the fuck up,” to § 87(2)(b) PO Alpers made this remark “in the heat of the moment” and was repeating the statement § 87(2)(b) had made.

An officer’s use of an impolite word during a stressful street encounter where that officer is attempting to gain control of the situation does not constitute misconduct (DAO-DCT Case #201818951) (**Board Review 29**).

There are approximately five officers standing in the lobby near § 87(2)(b) who is handcuffed, laying on the ground, and having an asthma attack. In addition to § 87(2)(b) and § 87(2)(b) there are several other civilians in the lobby, including § 87(2)(b) s grandmother, a male individual, and three young woman. At no point do any of these other individuals attempt to antagonize the officers or interfere with their investigation. § 87(2)(b) immediately complied with PO Alpers’ first and only order to back away from § 87(2)(b). § 87(2)(b) § 87(2)(g), turns around, takes several steps in PO Alpers direction, continues speaking to PO Alpers, and tells him to “Shut the fuck up.” However, § 87(2)(b) does not get close to PO Alpers or make any effort to push past or walk around his mother, who is standing in front of him. § 87(2)(b) is pushed out of the lobby by his mother and § 87(2)(b) only after PO Alpers’ discourteous response, § 87(2)(g)

§ 87(2)(g)

Allegation G – Abuse of Authority: Sergeant William Larkin searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Calle took § 87(2)(b) outside to the front of the building and sat him in the back of a police vehicle, and that after doing so, a search of the vehicle, which § 87(2)(b) was going to borrow, occurred. There is no video footage of the vehicle search.

In PO Calle’s BWC footage, at the 38:05 minute-mark of the media player timestamp, visible at the bottom of the screen, § 87(2)(b) is sitting in the back of a police vehicle speaking with § 87(2)(b) PO Calle, and Sgt. Larkin. PO Calle and Sgt. Larkin are standing next to § 87(2)(b) when he tells her to check his cousin’s car because there is nothing in it. PO Calle tells § 87(2)(b) that § 87(2)(b) threw a black bag inside the car and fled when officers approached him. At 39:35, § 87(2)(b) says to PO Calle, Sgt. Larkin, and § 87(2)(b) “go check the car. There’s no black bag inside the car” (**Board Review 01**).

§ 87(2)(b) § 87(2)(g) said he provided consent to PO Calle to search the vehicle and that he provided § 87(2)(b) with the keys so they could do so.

§ 87(2)(g) § 87(2)(b) stated that while § 87(2)(b) was in the back of the RMP, she asked him for the car keys, which he provided. § 87(2)(b) then provided the keys to Sgt. Larkin and told him to search the car.

Sgt. Larkin stated that § 87(2)(b) was in possession of the car keys and provided officers with verbal consent to search the vehicle. Sgt. Larkin did not document the vehicle search. Sgt. Larkin stated that consent would not have been necessary to search the vehicle as officers had observed § 87(2)(b) throw an object inside of it and therefore, they would have been able to search it anyway. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b) provided his mother with the car keys, and that she, Sgt. Larkin, and possibly additional officers, returned to the location of the vehicle while he remained with § 87(2)(b)

Consent is voluntary when it is a true act of the will, an unequivocal product of an essentially free and unconstrained choice. Voluntariness is incompatible with official coercion, actual or implicit, overt or subtle. People v. Gonzalez, 39 N.Y.2d 122 (1976) (**Board Review 30**).

§ 87(2)(g)

Allegation H – Abuse of Authority: Police Officer Frank Ryan searched the vehicle in which § 87(2)(b) was an occupant.

Allegation I – Abuse of Authority: Sergeant William Larkin searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) stated that she and § 87(2)(b) walked to where the vehicle was parked, and that Sgt. Larkin, PO Calle, PO Delrio, and PO Amaya were already present. PO Amaya had entered through the rear driver's side door and searched the back seat area. Sgt. Larkin entered the vehicle through the front passenger door and searched the front seat areas including the center console. Sgt. Larkin then entered through the rear driver's side door and searched the backseat area. § 87(2)(b) spoke to PO Calle and PO Delrio, who were standing next to the vehicle, about why § 87(2)(b) had been stopped. Approximately five minutes later, Sgt. Larkin and PO Amaya completed the vehicle search, § 87(2)(b) remained near the vehicle and continued speaking with PO Delrio for several minutes when PO Ryan emerged from a nearby parking lot, opened the front passenger door and entered the vehicle. PO Ryan searched the front seat areas of the car, but § 87(2)(b) did not recall specifically where. § 87(2)(b) did not recall if PO Ryan searched any other areas of the car but said the search lasted approximately five minutes and yielded negative results for contraband.

In a follow up statement, § 87(2)(b) said that Sgt. Larkin was present at the time PO Ryan searched the vehicle § 87(2)(g) § 87(2)(b) did not recall what Sgt. Larkin was doing or if he interacted with PO Ryan during this time (**Board Review 40**).

§ 87(2)(b) stated that he did not recall the specifics of the vehicle search as he was speaking with other officers while § 87(2)(b) was observing the vehicle search itself (**Board Review 31**).

PO Calle stated that he remained with § 87(2)(b) and was not present to observe the vehicle search. PO Delrio stated that he was busy speaking with § 87(2)(b) during the vehicle search and could not recall which officers entered the car or if anyone conducted an additional search. Sgt. Larkin acknowledged searching the vehicle and could not recall which, if any, other officers were involved, and he did not recall any officer conducting an additional search. PO Ryan acknowledged searching the vehicle with Sgt. Larkin. PO Ryan did not recall if he or any other officer returned to the vehicle for an additional search and he did not recall any reason to do so as the initial search had yielded negative results for contraband.

§ 87(2)(g)

§ 87(2)(g)

Allegation J – Abuse of Authority: Police Officer Michael Calle failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) stated that he was not provided with a business card and that he did not request one, § 87(2)(b) stated that she did not observe any officer provide § 87(2)(b) with a business card.

PO Calle said he ran out of business cards shortly before the day of the incident, so he could not provide § 87(2)(b) with one. PO Calle said he explained the reason for the stop to § 87(2)(b) and verbally provided him with his name and shield number. PO Calle offered to write this information down for § 87(2)(b) but § 87(2)(b) said it would not be necessary as she knew PO Calle and his team.

In PO Calle’s BWC footage, at the 43:30 minute-mark of the media player timestamp, visible at the bottom of the screen, PO Calle escorts § 87(2)(b) to an ambulance where he is treated for an asthma attack. At 48:25, PO Calle explains the reason for the stop to § 87(2)(b). At 49:25, PO Calle removes § 87(2)(b)’s handcuffs. An EMT asks PO Calle if his BWC is still on and PO Calle says yes, but that he will deactivate it because § 87(2)(b) is no longer being detained. PO Calle’s BWC is then deactivated. He remains inside the ambulance with § 87(2)(b). No further conversation between them is captured (**Board Review 01**).

NYPD Patrol Guide, Procedure 203-09 states officers are required to offer a business card at the conclusion of the following law enforcement activities, except in cases when a summons is issued or an arrest is made, as follows: noncustodial questioning of individuals suspected of criminal activity; a stop where an officer has an individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime and where a reasonable person would not feel free to end the encounter; frisk; and/or a search of persons or property, including vehicles. [...] Explain reason for law enforcement activities, unless providing this information would impair a criminal investigation, or exigent circumstances are present (i.e., physical resistance, flight, imminent danger of physical injury or damage to property, or other factors make such procedure impractical). If an officer runs out of pre-printed and generic business cards, they should allow member of the public ample time to write down their identification information.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 34**).
- § 87(2)(b) has been party to one additional CCRB complaint and has been named as a victim of four allegations (**Board Review 35**):
 - § 87(2)(b)
- PO Calle has been a member of service for eight years and has been a subject in four additional CCRB complaints and 13 allegations, one of which was substantiated.
 - 201214685 involved an unsubstantiated allegation of a search (of a person) and a substantiated allegation of a frisk against PO Calle. The Board recommended charges and the NYPD imposed formalized training.
 - 201809124 involved an unsubstantiated allegation of a search (of a person) against PO Calle.
- PO Delrio has been a member of service for eight years and has been a subject in two additional CCRB cases and five additional allegations, none of which were substantiated.
§ 87(2)(g)
- PO Alpers has been a member of service for five years and has been a subject in three additional CCRB complaints and five additional allegations, two of which were substantiated.
 - Case #201809823 involved substantiated allegations of refusal to provide name and discourtesy – word against PO Alpers. The board recommended Command Level 1 instructions, which the NYPD imposed.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this request.
- As of June 15, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this incident (**Board Review 36**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 13

Investigator: Trevor Hackett
Signature

Inv. Trevor Hackett
Print Title & Name

10/20/2021
Date

CCRB Case # 202000210

Squad Leader: Ethan De Angelo IM Ethan De Angelo 10/20/2021
Signature Print Title & Name Date